

1 ARIEL E. STERN, ESQ.  
Nevada Bar No. 8276  
2 REX D. GARNER, ESQ.  
Nevada Bar No. 9401  
3 AKERMAN LLP  
1160 Town Center Drive, Suite 330  
4 Las Vegas, NV 89144  
Telephone: (702) 634-5000  
5 Facsimile: (702) 380-8572  
Email: ariel.stern@akerman.com  
6 rex.garner@akerman.com

7 *Attorneys for Plaintiffs*

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 BANK OF AMERICA, N.A.; FEDERAL HOME  
LOAN MORTGAGE CORPORATION

11 Plaintiffs,

12 vs.

13 COPPER CREEK HOMEOWNERS  
14 ASSOCIATION, ATC ASSESSMENT  
COLLECTION GROUP, LLC, ELIZABETH  
15 PERALEZ, an individual,

16 Defendants.

17 ELIZABETH PERALEZ, an individual,

18 Counter-claimant,

19 v.

20 BANK OF AMERICA, N.A.; FEDERAL HOME  
21 LOAN MORTGAGE CORPORATION,

22 Counter-defendants.

Case No.: 2:16-cv-02963-APG-CWH

**STIPULATION AND ORDER TO STAY  
LITIGATION PENDING FINAL  
RESOLUTION OF PETITION(S) FOR  
WRITS OF CERTIORARI TO UNITED  
STATES SUPREME COURT**

23  
24 Plaintiffs, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP  
25 f/k/a Countrywide Home Loans Servicing, LP (**BANA**) and Federal Home Loan Mortgage  
26 Corporation (**Freddie Mac**) (collectively, **Plaintiffs**), by and through their counsel of record, Ariel  
27 E. Stern, Esq. and Rex D. Garner, Esq. of the law firm of Akerman LLP; defendant Copper Creek  
28

1 Homeowners Association (**Copper Creek**), by and through its counsel of record, Amber M.  
2 Williams, Esq. and J. William Ebert, Esq.; and defendant Elizabeth Peralez (**Peralez**) by and through  
3 her counsel of record, Craig S. Dunlap, Esq., (collectively, the **parties**) stipulate as follows:

4 1. This lawsuit involves quiet title/declaratory relief and other claims related to a non-  
5 judicial homeowner's association foreclosure sale conducted pursuant to NRS 116.

6 2. On August 12, 2016, the Ninth Circuit issued its decision on appeal in *Bourne Valley*  
7 *Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1159–60 (9th Cir. 2016), holding that NRS 116  
8 is facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14,  
9 2016, vacating and remanding the judgment to the United States District Court, District of Nevada.

10 3. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay*  
11 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*,  
12 133 Nev. Adv. Op. 5, \_\_ P.3d \_\_, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct contrast  
13 to *Bourne Valley*, that no state action supported a challenge under the Due Process Clause of the  
14 United States Constitution and that a homeowners association's assessment lien foreclosure sale  
15 pursuant to NRS Chapter 116 does not constitute a takings in violation of the Supremacy Clause of  
16 the United States Constitution.

17 4. The parties in *Bourne Valley* and *Saticoy Bay* are seeking review of both decisions in  
18 the United States Supreme Court. *Bourne Valley*'s deadline to file its petition for writ of certiorari of  
19 the Ninth Circuit's *Bourne Valley* decision is April 3, 2017. *See Bourne Valley Court Tr. v. Wells*  
20 *Fargo Bank, NA.*, United States Supreme Court Case No. 16A753. Wells Fargo's deadline to file its  
21 petition for writ of certiorari of the Nevada Supreme Court's *Saticoy Bay* decision is April 25, 2017.  
22 Thus, the parties believe the stay requested herein is appropriate.

23 5. On February 8, 2017, the Nevada Supreme Court stayed the issuance of the remittitur  
24 in *Saticoy Bay* pending the filing of a petition for a writ of certiorari with the United States Supreme  
25 Court, and if a petition is filed, the stay of the remittitur will remain in effect until final disposition  
26 of the certiorari proceedings before the United States Supreme Court.

27 6. Several judges in this district have stayed similar cases pending exhaustion of all  
28

1 appeals before the United States Supreme Court. *See e.g., Nationstar Mortg. LLC v. Green Valley S.*  
2 *Owners Ass'n*, No. 2:16-cv-00883-GMN-GWF, ECF No. 38 (D. Nev. Oct. 5, 2016); *Bank of*  
3 *America, N.A. v. Canyon Willow Trop Owners' Ass'n*, No. 2:16-cv-01327-GMN-VCF, ECF No. 25  
4 (D. Nev. Oct. 26, 2016); *Deutsche Bank Nat'l Tr. Co. v. Copper Sands HOA*, No. 2:16-cv-00763-  
5 JAD-CWH, ECF No. 29 (D. Nev. Feb. 28, 2017).

6 7. To determine if a continued stay is appropriate, the Court considers (1) damage from  
7 the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the orderly  
8 course of justice. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066  
9 (9th Cir. 2007) (setting forth factors). Here, the factors support a stay of litigation.

10 a. Damage from Stay: Any damage from a temporary stay in this case will be minimal  
11 if balanced against the potential fees, costs, and time which would surely ensue in this matter if  
12 litigation were allowed to continue that could be mooted by a decision in *Bourne Valley* certiorari  
13 proceedings. Indeed, the parties will be able to avoid the cost and expense of continued legal  
14 proceedings in light of what is unsettled law to say the least. Moreover, the Court will be relieved of  
15 expending further time and effort until the conflict between the circuit and Nevada Supreme Court is  
16 resolved. Thus, a stay will benefit all parties involved herein.

17 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls  
18 one party more than the other. This relatively equal balance of equities results from the need for all  
19 parties to have finality, given the split in the state and federal court decisions. The parties agree that  
20 any hardship or inequity falling on any of them is outweighed by the benefits of a stay.

21 c. Orderly Course of Justice: At the center of this case is a homeowners' association's  
22 foreclosure sale under NRS 116. The outcome of the petitions for writ in *Bourne Valley* and/or  
23 *Saticoy Bay* have the potential to affirm or overturn either case. Without a stay, the parties will  
24 expend resources that will be unnecessary if either or both petitions are granted. A stay would also  
25 avoid a likely appeal from any subsequent judgment in this case. A temporary stay would  
26 substantially promote the orderly course of justice in this case. A stay will avoid the moving  
27 forward without final resolution of the constitutional issues and the state court/federal court conflict.

8. The parties agree that all proceedings in the instant case, including motion, discovery, and other litigation deadlines, are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy Bay* certiorari proceedings before the United States Supreme Court.

9. Any party may file a written motion to lift stay at any time if either party determines it appropriate.

10. Pending review and approval of this stipulation by the Court, any deadlines for currently pending motions are suspended. If this stipulation is not approved by the Court, any responses, oppositions, and/or reply briefs on pending motions will be due thirty (30) days from entry of the Court's order. If this stipulation is granted, all pending motions as of the date of this stipulation shall be deemed withdrawn and may be re-filed upon expiration of the stay if appropriate. The parties shall, within forty five (45) days of final resolution of all *Bourne Valley* and/or *Saticoy Bay* proceedings before the United States Supreme Court, submit a joint status report and renewed discovery plan and scheduling order for the Court's approval pursuant to local rules.

DATED March 28, 2017.

**LIPSON NEILSON COLE SELTZER & GARIN**

**AKERMAN LLP**

/s/ Amber M. Williams

/s/ Rex D. Garner

Amber M. Williams  
J. William Ebert  
9900 Covington Cross Dr.  
Ste. 120  
Las Vegas, NV 89144

Ariel E. Stern, Esq.  
Nevada Bar No. 8276  
Rex D. Garner, Esq.  
Nevada Bar No. 9401  
1160 Town Center Drive  
Suite 330  
Las Vegas, NV 89144

*Attorneys for Defendant Copper Creek Homeowners Association*

*Attorneys for Plaintiffs*

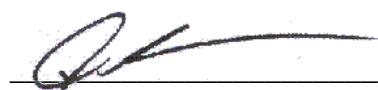
**CRAIG S. DUNLAP, ESQ.**

**IT IS SO ORDERED.**

/s/ Craig S Dunlap

Craig S Dunlap, Esq.  
10161 Park Run Drive  
Suite 150  
Las Vegas, NV 89145

*Attorney for Elizabeth Perez*



UNITED STATES DISTRICT JUDGE  
Dated: March 29, 2017.